

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LINDENWOOD FEMALE COLLEGE  
d/b/a LINDENWOOD UNIVERSITY,  
individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Defendant.

Case No. 4:20-cv-01503-HEA

**PLAINTIFF'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITIES**

Plaintiff Lindenwood University submits as supplemental authority a new case that is pertinent and significant to Plaintiff's arguments that this Court should deny Defendant's pending motion to dismiss:

***Novant Health Inc. v. American Guarantee & Liability Insurance Co., No. 1:21-CV-309, 2021 WL 4340006 (M.D.N.C. Sept. 23, 2021) (attached as Exhibit 1)***

*Novant Health* supports a policy interpretation in favor of coverage on Plaintiff Lindenwood University's claims and rejection of Defendant Zurich's reliance on the Policy's Contamination exclusion. *Novant Health* involves the same Zurich EDGE policy form.

First, the court in *Novant Health* held that the plaintiff stated a viable claim under the policy for "direct physical loss of or damage" to property by alleging that the virus was present on its property and physically transformed the air and surfaces, rendering them dangerous transmission vehicles, and that the damage to property caused by the presence of the virus cannot be fully remediated by routine cleaning and disinfection alone. (*Id.* at \*2-3). This Court should reach the

same conclusion because Plaintiff Lindenwood University has made the same allegations in its operative Complaint.

Second, the court in *Novant Health* held that the insurer could not meet its burden at the motion to dismiss stage with respect to the policy's Contamination exclusion; emphasizing that the policy includes "contradictory language" as to whether "virus" is part of that exclusion. As the court explained, the insurer included with the policy an Amendatory Endorsement that states it "changes the policy" by deleting "virus" from the scope of the Contamination exclusion. The court rejected the insurer's argument that the Amendatory Endorsement unambiguously applied only to claims connected to Louisiana; emphasizing that the Endorsement at issue "does not contain any statement in the text that it is limited to claims or property in Louisiana," unlike other endorsements appended to the policy that did include such a statement. And with respect to the insurer's argument about "Louisiana" appearing in the Endorsement's title; the court responded: "[T]he policy itself provides that 'titles ... shall not in any way affect the provisions to which they relate' (Policy § 6.20), undermining [the insurer's] contention that the title 'Amendatory Endorsement – Louisiana' limits the meaning of the text of the endorsement that it 'changes the policy.'" (*Id.* at \*3-5). This Court should reach the same conclusion with respect to Defendant Zurich's misplaced reliance on the Policy's same Contamination exclusion and Amendatory Endorsement.

\* \* \*

For the reasons stated herein, as well as those stated in *Plaintiff's Opposition to Defendant's Motion to Dismiss* (Doc. 42) and *Plaintiff's First and Second Notices of Supplemental Authorities* (Doc. 54, 61) this Court should deny Defendant's motion to dismiss.

Date: September 27, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2021 a true and correct copy of the foregoing document was filed electronically with the Court's CM/ECF system, which electronically sent notice of the foregoing document to all counsel of record.

/s/ Todd M. McGuire

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